vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5266 OF 2007

Kolhapur Municipal Corporation ... Petitioner

V/s.

Rajan Seeleman Pandat ... Respondent

Mr.S.S. Patwardhan for Petitioner
Mr.M.S. Topkar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 22, 2007**

P.C.:

. The petitioner Corporation has challenged the order of the Industrial Court in Complaint (ULP) No.195 of 2004 passed on 13.12.2006. The undisputed facts in this case are that the Corporation had suspended the respondent pending an enquiry. The allegation against the respondent was of misappropriation of Rs.46,800/-. The petitioner, it appears, continued to keep the respondent under suspension for about 8 years without paying 100% of the wages as subsistence allowance. Aggrieved by the action of the Corporation, the respondent filed complaint (ULP) No.195 of 2004 for the following reliefs:

> 10.a) it may kindly declared that the respondent has engaged in unfair labour practice and it may kindly be directed to the respondent to cease and desist from engaging an unfair labour practice.

b) That respondent may kindly be directed to give the work of the clark to the complainant.

c) That the respondent may kindly be directed to pay the difference of subsistence allowance between 75% and 100% of the wages of the complainant.

d) That the respondent may kindly be directed to pay the amount of annual increment, which are stopped by the respondent by illegal way.

e) It may kindly be directed to the respondent to pay the incidental/ financial benefits to the complainant any other relief may kindly be granted in favour of the complainant.

f) The complainant may kindly be permitted to add, amend or alter the complaint as and when necessary.

2. The Respondent had moved an application for interim relief which was rejected by the Industrial Court. However, liberty was granted to the respondent to move a fresh application in the event the departmental enquiry instituted against him was not completed by the end of November 2005. Since the enquiry was not completed and is in fact still pending, the respondent moved a fresh application being Exhibit U9. The Industrial Court directed the Corporation to allow the complainant who is the respondent herein to resume his duties on the post of clerk. The Corporation was directed to pay arrears of "suspension allowance" to the complainant.

3. The Corporation has already reinstated the respondent pursuant to the order of the Industrial Court. As regards the payment of arrears of subsistence allowance, it is submitted on behalf of the Corporation that these arrears would not be payable since the respondent has misappropriated Rs.46,800/- and, therefore, unless the respondent pays this amount to the Corporation it would be difficult to release the subsistence allowance and to continue him in service pursuant to the orders of the Industrial Court.

4. In my opinion, the interests of justice would be met if the order of the Industrial Court is modified as follows:

(i) The Respondent corporation shall permit the respondent to resume duties on the post of clerk.

(ii) The respondent shall pay to the Corporation the amount of Rs.46,800/- allegedly misappropriated by him within 2 weeks from today.

(iii) The Corporation shall pay the arrears of subsistence allowance within four weeks from today to the respondent.

(iv) These arrears shall be paid, within 4 weeks from today, after deducting Rs.46,800/- which the Corporation will retain, if the workman is unable to comply with clause (ii) above.

(v) If the Corporation intends to proceed with the enquiry against the respondent it shall complete it as expeditiously as possible.

5. This order is passed without prejudice to the rights and contentions of both the parties in the enquiry.

6. Petition disposed of in the above terms.